**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 748 OF 2006.**

Mushtak Ahmed Mohammed Aslam & others. ... Petitioners.
Versus.
Jamil Ahmed Maulabux Ansari. ... Respondent.

Shri Nitin Mulye holding for Shri G.S.Godbole and Shri R.D.Barve for the Petitioners.

Shri Sunil Chavan i/by M/s.Firdosh & Co.for the Respondent.

**CORAM : ABHAY S.OKA, J.**

**DATED : 14th February, 2007.**

**P.C.:**

1. By consent taken up for final hearing. Submissions of the Advocates appearing for the parties were heard yesterday. The Respondent filed Special Civil Suit No.548 of 2004 for declaration of ownership and injunction in respect of the house property bearing City Survey No.226 situated at Ganj Peth, Pune against the Petitioners in the Court of the Joint Civil Judge, senior Division, Pune. The Petitioners filed Special Civil Suit No.534 of 2005 against the Respondent for possession of a premises in occupation of the Respondent in the said House property bearing City Survey No.226. By order dated 23rd November 2005 passed by the learned District Judge, Pune in Miscellaneous Application No.787 of 2005. Both these suits were transferred to the Court of the learned Joint Civil Judge, Senior Division, Pune

for disposal in accordance with law.

2. The Petitioners filed an application at Exh.46 praying that both the suits should be heard together by permitting the parties to lead common evidence. By order dated 21st January 2006, the learned trial Judge disposed of the said Application by directing that common evidence cannot be recorded in the suits. He, however, directed that both the suits will be decided simultaneously.

3. The learned Counsel for the Petitioners submitted that considering the nature of controversy involved in both the suits, some of the issues will be common and even substantial part of the evidence will be common. He, therefore, submitted that the trial Court ought to have directed that both the suits should be heard together. The learned Counsel for the Respondent opposed the prayer by pointing out that the Respondent has already examined one witness in his suit and has filed his own affidavit of examination-in-chief. He submitted that no interference is called for with the discretionary order passed by the trial Court.

4. I have considered the submissions made by the learned Counsel appearing for the parties. I have perused the copies of the pleadings in both the suits.

It is not in dispute that both the suits relate to the same property. The suit filed by the Respondent is prior in time. In the said suit a declaration is claimed that he is the owner of the property in question. In the suit filed by the Petitioners, the prayer is for possession of a part of the same house property. In the said suit the Petitioners are claiming to be owners of the same property. It is thus obvious that the issues relating to the title are common in both the suits and substantial part of the evidence will be common. To ensure expeditious disposal of both the suits, this is a fit case where both the suits should be heard together. Therefore, the impugned order will have to be quashed and set aside.

5. Hence the following order is passed:

i) The impugned order dated 21st January 2006 is quashed and set aside. Application at Exh.46 is allowed.

ii) Special Civil Suit No.534 of 2005 filed by the Petitioners will be heard along with Special Civil Suit No.548 of 2004 filed by the Respondent and evidence in both the suits shall be recorded in Special Civil Suit No.548 of 2004.

iii) In view of this order, the Respondent will be entitled to apply for recalling the witness who is already examined by him. The Respondent will also at liberty to file further affidavit of examination-in-chief in addition to the one which is already filed.

iv) The trial Court will ensure that the suits are disposed of expeditiously.

**Judge.**